



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2019-0437]**

**RIN 1625-AA08**

### **Special Local Regulations; Upper Mississippi River, 839.5 to 840.5 St. Paul, MN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing special local regulations during the “Red Bull Flugtag” event to be held on the navigable waters of the Upper Mississippi River in St. Paul, MN on September 7, 2019. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. These special local regulations will establish primary and secondary exclusion areas, and a spectator area. Additionally, these areas will have a specific set of restrictions as described in Section IV.

**DATES:** This rule is effective 8 a.m. to 5 p.m. on September 7, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0437 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Waterways Management

Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560,  
email [Christian.J.Barger@uscg.mil](mailto:Christian.J.Barger@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On May 15, 2019, Red Bull North America notified the Coast Guard that it will be holding a Red Bull Flugtag event on the Upper Mississippi River at Harriett Island Park in St. Paul, MN from 11 a.m. to 4 p.m. on September 7, 2019. Flugtag is a homemade, non-powered flying machine competition. Contestants launch their machines from a 22 feet high platform built over the Upper Mississippi River. Potential hazards from this event include the temporary installation of a structure along the right descending bank of the river, temporary channel obstructions until the Flugtag machines are recovered from the river, and the presence of debris and persons in the water within the event perimeter. In response, on June 14, 2019 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations, Upper Mississippi River, St. Paul MN. (84 FR 27743). During the comment period that ended July 15, 2019 we received three comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Delaying the effective date of this rule would be contrary to the public interest because the regulated area must be established by September 7, 2019 to ensure the safety of vessels, persons, and the navigable waters in the regulated area before, during, and after the scheduled event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The purpose of this rule is to ensure the safety of vessels, persons, and the navigable waters in the regulated area before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

The Coast Guard received three comments in response to the NPRM.

The sponsor for the event submitted a comment via email requesting to extend the duration of the regulated area from 8 a.m. to 5 p.m. to account for the setup and break down of the event. As a result of this email, the duration of the regulated area has been extended.

Another comment was received from an industry representative in regards to maintaining proper patrol vessel span of control to ensure the safety of not only the spectators and the participants, but anyone wishing to transit in the area. He cited issues experienced during a previous event. Additionally, the duration of the waterway closure was a concern as it would hinder commercial transit on the waterway. The Coast Guard acknowledges the concerns based on previous events of similar nature and the need to ensure an adequate number of patrol craft to enforce these regulations. The Coast Guard

is working very closely with our port partners and law enforcement agencies to ensure adequate resources are available to maintain the safety of the event. Additionally, the Coast Guard is modifying the rule as proposed in the NPRM to establish a total of three zones. The primary and secondary exclusion areas will be closed to general vessel traffic from 8 a.m. to 5 p.m., however, the spectator zone which encompasses the majority of the river width in the regulated area will only be regulated from 10:30 a.m. to 4:30 p.m. The zones will be described in detail in the actual text of this temporary final rule.

Another comment was received from the president of a business that operates passenger vessels in the area of the Flugtag event. This person was concerned about their ability to safely operate around the estimated 300 spectator vessels that could be on the waterway. As a result of this comment, the Coast Guard adjusted the special local regulation restrictions from those proposed in the NPRM to provide for a safe passenger vessel transit area throughout the duration of the event as detailed below.

With consideration to the comments received, the Coast Guard is establishing special local regulations on specified waters of the Upper Mississippi River on September 7, 2019. The regulated area extends from mile marker 839.5 to 840.5 across the entire width of the Upper Mississippi River. The regulations will be effective from 8 a.m. to 5 p.m. for the primary and secondary exclusion areas as described below. The designated spectator area will be regulated from 10:30 a.m. to 4:30 p.m.

Within the overall regulated area, there are three unique areas, each with their own specific restrictions. The areas are as follows: a primary exclusion area, a secondary exclusion area, and a designated spectator area.

The **primary exclusion area**, where all persons and vessels, except those persons and vessels participating in the competition, are prohibited from entering, transiting through, anchoring in, or remaining within, is established within lines connecting the following points: from point one, at position latitude 44°56'23"N, longitude 93°05'44"W to point two at position latitude 44°56'24"N, longitude 93°05'46"W; from point two to point three at position latitude 44°56'18"N, longitude 93°05'54"W; and from point three to point four at position latitude 44°56'17"N longitude 93°05'52"W. This area will be enforced from 8 a.m. to 5 p.m.

The **secondary exclusion area**, where all persons and vessels, except commercial vessels are prohibited from entering, anchoring in, or remaining within, with the exception of continuous transverse travel across the area, is established within lines connecting the following points: from point five, at position latitude 44°56'17"N, longitude 93°05'52"W; to point six at position latitude 44°56'18"N, longitude 93°05'54"W; from point six to point seven at latitude 44°56'00"N, longitude 93°06'15"W; from point seven to point eight on latitude 44°55'57"N, longitude 93°06'12" W. This area will be enforced from 8 a.m. to 5 p.m.

The **designated spectator area** is located between mile markers 840.5 and 839.5, outside of the primary and secondary exclusion areas. All vessels are prohibited from transiting in excess of idle speed, unless authorized by the Coast Guard Patrol Commander. Spectator vessels are authorized to enter, transit through, anchor in, or remain within all waters of the spectator area from 10:30 a.m. until 4:30 p.m. Vessels other than spectator vessels and those directly involved in the event will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed

it safe to do so. All spectator vessels must disperse from the navigational channel by 4:30 p.m. at which time the standard navigation rules will be enforced.

Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the regulated exclusion area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners (LNM), Broadcast Notice to mariners (BNM) and press release.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on data collected from previous events in regards to the risk associated with this event.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator due to the event taking place for one day, for a only a nine hour period and on a one mile stretch of the Upper Mississippi River.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,



or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting nine hours that will prohibit entry of vessels at certain zones on certain waters of the Upper Mississippi River. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## **PART 100 SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C 70041; 33 CFR 1.05-1

2. Add § 100.35-T08-0437 to read as follows:

### **§ 100.35-T08-0437 Special Local Regulation; Upper Mississippi River, 839.5 to 840.5 St. Paul, MN.**

(a) *Regulated areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *General regulated area.* All waters of the Upper Mississippi River, contained within mile markers 839.5 to 840.5.

(2) *Primary exclusion area.* All waters of the Upper Mississippi River, contained within lines connecting the following points: from point one, at position latitude 44°56'23"N, longitude 93°05'44"W to point two at position latitude 44°56'24"N, longitude 93°05'46"W; from point two to point three at position latitude 44°56'18"N, longitude 93°05'54"W; and from point three to point four at position latitude 44°56'17"N, longitude 93°05'52"W. This area will be enforced from 8 a.m. to 5 p.m.

(3) *Secondary exclusion area.* All waters of the Upper Mississippi River, contained within lines connecting the following points: from point five, at position latitude 44°56'17"N, longitude 93°05'52"W; to point six at position latitude 44°56'18" N,

longitude 93°05'54"W; from point six to point seven at latitude 44°56'00"N, longitude 93°06'15"W; from point seven to point eight at position latitude 44°55'57"N, longitude 93°06'12" W. This area will be enforced from 8 a.m. to 5 p.m.

(3) *Designated spectator area.* All other waters of the Upper Mississippi River between mile markers 839.5 (Wabasha St. Bridge) and 840.5 (Smith Avenue Bridge). The designated spectator area will be enforced from 10:30 a.m. to 4:30 p.m. Spectator vessels are required to disperse by 4:30 p.m. to allow the river to re-open to all vessel traffic.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector Upper Mississippi River (COTP).

(2) *Official Patrol Craft* means any vessel assigned or approved by the COTP with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Red Bull Flugtag event under the auspices of the Marine Event Permit issued to the event sponsor and approved by the COTP.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol who are present on the water to observe the event.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion

from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(3) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz).

(4) Only participants and official patrol vessels are allowed to enter the primary exclusion area.

(5) Only commercial vessels, other vessels transiting transversely, and official patrol are allowed to enter the secondary exclusion area.

(6) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. All vessels moving within the designated spectator area shall do so at the slowest safe speed.

(7) Commercial vessels, and vessels other than participants and spectator vessels, may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, vessels must pass directly through the regulated area, remaining outside the exclusion areas, at the slowest safe speed and without loitering.

(d) *Notice.* The Coast Guard will publish a notice in the Eighth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(e) *Enforcement period.* (1) The designated spectator area will be enforced from 10 a.m. to 4:30 p.m.

(2) The primary and secondary exclusion areas will be enforced from 8 a.m. to 5 p.m.

Dated: August 15, 2019.

S.A. STOERMER

Captain, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River

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